UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CHIJIOKE ISAMADE, Plaintiff, v. PARKER-WRIGHT, et al., Defendants.	No. 2:22-cv-0358 AC P ORDER & FINDINGS & RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Currently before the court are defendants' motions to strike and for summary judgment. ECF Nos. 22, 41. For the reasons discussed below, defendants' motion to strike is granted in part and denied in part, and the undersigned recommends that defendants' motion for summary judgment be granted on all claims.

I. Procedural History

This case proceeds on plaintiff's complaint, ECF No. 1, which was found to state claims for medical deliberate indifference against defendants Parker-Wright and Friedrichs[1], excessive force against defendants Parker-Wright, Friedrichs, and Solovyev, and discrimination and retaliation against defendant Solovyev. ECF No. 7. After the close of fact discovery, defendants

[1] Defendant Friedrichs was erroneously sued as Freiedrichs. ECF No. 1 (Verified Complaint); ECF No. 16 (Answer). The Court of the Clerk will be directed to update the docket accordingly.

filed a motion for summary judgment. ECF No. 22. Plaintiff filed an initial opposition and asked for an extension to file a complete opposition. ECF No. 23; ECF No. 23-2 at 2. The first two extensions were granted, but the third was denied. ECF Nos. 25, 29, 32. On January 13, 2025, the court received plaintiff's supplemental opposition. ECF No. 37. Defendants were directed to file a reply, which they did, along with a motion to strike. ECF Nos. 38, 40-41.

Because the filings indicated that plaintiff had not had a chance to view the video evidence, the court ordered defendants to make arrangements for plaintiff to view the video evidence, and plaintiff was given leave to file a sur-reply, limited to addressing the contents of the video. ECF No. 42 at 2-3. Arrangements were made, but plaintiff refused to view the video evidence. ECF Nos. 45-47. Plaintiff filed a request to view the video evidence, a sur-reply to the motion for summary judgment, and a motion for sanctions and dismissal. ECF Nos. 43, 47-48.[2] The court denied plaintiff's request and motion and disregarded his unauthorized sur-reply. ECF No. 49.

II. Plaintiff's Allegations

The complaint alleges that plaintiff's rights under the First and Fourteenth Amendment were violated on December 2 and 3, 2021, by the following actions: defendant Parker-Wright abruptly ended his phone access, triggering an anxiety attack, ignored plaintiff when he pushed the medical button twenty-one times to get medical assistance, and initiated an unnecessary use of force response by calling custody staff to physically subdue plaintiff rather than contacting medical after, ECF No. 1 at 3; defendant Friedrichs snatched plaintiff's legal paper out of his hand, ripped the paper, tossed it away and plaintiff "was tackled to the ground" and "kneed by officers on [his] throat over ten times which lead to internal bleeding in [his] oesophagus [sic]," id. at 4; defendant Solovyev ordered deputies to batter him and to leave him while he choked on his own blood for an hour and a half before finally allowing a nurse to check him and making an emergency call to take plaintiff to the hospital, id. at 4-5; defendant Solovyev, who is of Russian

[2] Plaintiff informed the court that he wanted to file an amended complaint after ruling on summary judgment. ECF No. 43. On May 1, the court granted him thirty days to file a motion to amend, ECF No. 45 at 2, but he never did.

decent, made racist and condescending remarks towards plaintiff because of his African descent and instructed deputies to batter plaintiff and ignore his medical needs, id.; and defendant Solovyev retaliated against plaintiff by contacting the Sacramento district attorney to file felony charges against plaintiff. Id. at 5. Plaintiff alleges defendants caused him emotional distress, positional asphyxiation, and internal bleeding in his esophagus. Id. at 3-5.

III. Motion to Strike

A. Overview

Defendants object to and seek to strike plaintiff's Exhibits F (Order for Release of Person In Custody and Criminal Docket Sheet), ECF No. 37 at 52-56; I (United States Probation & Pretrial Services Letter), id. at 67-68; J (DME Supply Receipt), id. at 69-71; K (History of Prior Complaints), id. at 72-75; L (Medication Lists, from December 2024), id. at 76-78; and Q (Charge Summary, Offense Date December 5, 2021), id. at 91-94. ECF No. 41 at 5. They object based on lack of foundation and authentication. Id. They seek to strike based on plaintiff's failure to disclose these records in response to defendants' requests for production ("RFP") Nos. 6-8, 10, 12, 18, 21, and 22. Id. at 1-5; ECF No. 41-1 at 6-7 (Defendant Parker-Wright's RFP, Set One, p.3-4). Plaintiff did not file an opposition or otherwise respond.

B. Objections

In reviewing evidentiary objections at summary judgment, courts "focus on the admissibility of its contents" and not "on the admissibility of the evidence's form." Fraser v. Goodale, 342 F.3d 1032, 1036 (9th Cir. 2003). Even if the non-moving party's evidence is presented in a form that is currently inadmissible, such evidence may be evaluated on a motion for summary judgment so long as the moving party's objections could be cured at trial. Burch v. Regents of Univ. of California, 433 F. Supp. 2d 1110, 1119-20 (E.D. Cal. 2006). Because it appears plaintiff may be able to cure the deficiencies at trial, and courts in this circuit routinely overrule objections based on lack of foundation and lack of proper authentication, defendants' objections are overruled. See e.g., See Chavez v. Ford Motor Credit Company, LLC, No. 1:23-cv-1205 SKO, 2025 WL 1001587 at *1, 2025 U.S. Dist. LEXIS 64222 at *2-3 (E.D. Cal. Apr. 3, 2025); Morton v. Cnty. of San Diego, No. 21-cv-1428 MMA DDL, 2024 WL 5126281 at *4,

2024 U.S. Dist. LEXIS 227241 at *12 (S.D. Cal. Dec. 16, 2024).

C. Exclusionary Sanctions

> A party who has . . . responded to . . . request for production . . . must supplement or correct its disclosure or response [] in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing[.]

Fed. R. Civ. P. 26(e)(1)(A) (emphasis added). If a party fails to comply with Rule 26(e), "the party is not allowed to use that information . . . to supply evidence on a motion . . . unless the failure was substantially justified or is harmless." Fed. R. Civ. P. 37(c)(1); see Goodman v. Staples the Off. Superstore, LLC, 644 F.3d 817, 827 (9th Cir. 2011). The party facing exclusionary sanctions has the burden to show that its failure to comply was justified or harmless. Yeti by Molly, Ltd. v. Deckers Outdoor Corp., 259 F.3d 1101, 1107 (9th Cir. 2001).

Exhibit F will not be excluded because defendants do not identify which specific RFP it is responsive to, the court is unable to independently determine which RFP they may be referring to, and, to the extent Exhibit F is somehow responsive, the exclusionary rule does not apply because plaintiff disclosed the information in Exhibit F during his deposition. See ECF No. 22-6 at 51-52 (Plaintiff's Deposition ("Pl's Depo.") 25:20-26:9). Moreover, because the documents in Exhibit F can be judicially noticed, the court will take judicial notice of the proceedings in United States v. Isamade, case no. 2:21-mj-0172 CKD (E.D. Cal. 2021) ("U.S. v. Isamade"), and, where relevant, cite directly to those proceedings. See Fed. R. Evid. 201(b) (a court may judicially notice a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned"); United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992) (The court "may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.") (citation and internal quotation marks omitted) (collecting cases).

The court will not exclude Exhibit I and K because defendants do not identify which specific RFP they are responsive to, and because it appears defendants already possessed these

documents and included them in their own exhibits. Compare ECF No. 37 at 68, 74-75 with ECF No. 22-4 at 30, 37, 89. The court, however, clarifies that to the extent plaintiff points to Exhibit K as the complaint histories of defendant Friedrichs and nondefendant Murphy, he is incorrect. Exhibit K consists of an incomplete photocopy set of defendants Solovyev's and Parker-Wright's complaint histories. Id.

Defendants do not identify which specific RFP Exhibit Q is responsive to, nor can the court determine which one they may be referring to. To the extent defendants claim Exhibit Q is responsive to RFP No. 7 based on plaintiff's written response regarding fabricated statements by defendant Friedrich and nondefendant Murphy, Exhibit Q does not support plaintiff's contention that defendant Solovyev contacted the Sacramento district attorney's office, or even that, as he claims, defendant Friedrichs and nondefendant Murphy's statements were fabricated. Exhibit Q is therefore not responsive to RFP No. 7, and plaintiff was not required to produce it.

Exhibits J and L, however, will be excluded because they appear to be responsive to RFP Nos. 6, 8, 10, 12, and 18, plaintiff did not supplement his production with these records, and has not met his burden to show that failure to disclose these documents was justified or harmless.[3]

IV. Motion for Summary Judgment

A. Overview

Defendants argue that they are entitled to summary judgment because plaintiff cannot establish that defendants Parker-Wright and Solovyev were deliberately indifferent to his medical needs; that defendants Parker-Wright, Friedrichs, and Solovyev used excessive force; that defendant Solovyev discriminated against plaintiff based on race or religion; or that defendant Solovyev retaliated against plaintiff. ECF No. 22-1 at 14-18, 21-23, 25-26. Alternatively, defendants argue plaintiff's claims fail because defendants are entitled to qualified immunity, and/or plaintiff did not exhaust his administrative remedies under the Prison Litigation Reform Act ("PLRA"). Id. at 18-21, 23-25.[4]

[3] As discussed below, consideration of Exhibits J and L would not change the recommended outcome.

[4] Defendants simultaneously served plaintiff with notice of the requirements for opposing a motion pursuant to Rule 56 of the Federal Rules of Civil Procedure along with their motion for

Despite plaintiff's efforts to comply with Federal Rule of Civil Procedure 56(c)(1)(A) and Local Rule 260(b), plaintiff has not strictly done so. Nevertheless, because plaintiff is pro se, the court will consider the record before it in its entirety. See Thomas v. Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010) (courts are to "construe liberally motion papers and pleadings filed by *pro se* inmates and should avoid applying summary judgment rules strictly"). However, only those assertions in the opposition which have evidentiary support in the record will be considered.

In opposition, plaintiff argues that he can establish deliberate indifference and that the force used was more than necessary under the circumstances. ECF No. 23-1 at 2; ECF No. 37 at 10-11, 14-15. Plaintiff also raises several arguments regarding the conduct of individuals who are not parties to this suit. ECF No. 23-1 at 4, 6-7; ECF No. 37 at 12-14; Id. at 4-6 (Pl's Declaration in Support of Opposition to MSJ ("Pl's Decl.") ¶¶ 16, 18-19, 23-29). With respect to exhaustion, plaintiff admits that he failed to exhaust his administrative remedies but argues it was due to fear of retaliation. ECF No. 23 at 12; ECF No. 37 at 12-14. In response to his other claims, plaintiff asserts defendants violated the Equal Protection Clause by depriving him of his property and retaliating against him without due process. Id. at 15-16.

B. Legal Standards for Summary Judgment

Summary judgment is appropriate when the moving party "shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Under summary judgment practice, "[t]he moving party initially bears the burden of proving the absence of a genuine issue of material fact." In re Oracle Corp. Sec. Litig., 627 F.3d 376, 387 (9th Cir. 2010) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). The moving party may accomplish this by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials" or by showing that such materials "do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to

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summary judgment. ECF No. 22-3; see Klingele v. Eikenberry, 849 F.2d 409, 411 (9th Cir. 1988) (pro se prisoners must be provided with notice of the requirements for summary judgment).

support the fact." Fed. R. Civ. P. 56(c)(1).

"Where the non-moving party bears the burden of proof at trial, the moving party need only prove that there is an absence of evidence to support the non-moving party's case." Oracle Corp., 627 F.3d at 387 (citing Celotex, 477 U.S. at 325); see also Fed. R. Civ. P. 56(c)(1)(B). Indeed, summary judgment should be entered, "after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322. "[A] complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Id. at 323. In such a circumstance, summary judgment should "be granted so long as whatever is before the district court demonstrates that the standard for the entry of summary judgment, as set forth in Rule 56(c), is satisfied." Id.

If the moving party meets its initial responsibility, the burden then shifts to the opposing party to establish that a genuine issue as to any material fact actually does exist. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). In attempting to establish the existence of this factual dispute, the opposing party may not rely upon the allegations or denials of its pleadings but is required to tender evidence of specific facts in the form of affidavits, and/or admissible discovery material, in support of its contention that the dispute exists. See Fed. R. Civ. P. 56(c). The opposing party must demonstrate that the fact in contention is material, i.e., a fact "that might affect the outcome of the suit under the governing law," and that the dispute is genuine, i.e., "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

In the endeavor to establish the existence of a factual dispute, the opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient that "the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987) (quoting First Nat'l Bank of Ariz. v. Cities Serv. Co., 391 U.S. 253, 288-89 (1968). Thus, the "purpose of summary judgment is to pierce the pleadings and to assess the proof in order to

see whether there is a genuine need for trial." Matsushita, 475 U.S. at 587 (citation and internal quotation marks omitted).

"In evaluating the evidence to determine whether there is a genuine issue of fact, [the court] draw[s] all inferences supported by the evidence in favor of the non-moving party." Walls v. Cent. Contra Costa Transit Auth., 653 F.3d 963, 966 (9th Cir. 2011) (citation omitted). It is the opposing party's obligation to produce a factual predicate from which the inference may be drawn. See Richards v. Nielsen Freight Lines, 810 F.2d 898, 902 (9th Cir. 1987). Finally, to demonstrate a genuine issue, the opposing party "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita, 475 U.S. at 586 (citations omitted). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" Id. at 587 (quoting First Nat'l Bank, 391 U.S. at 289).

C. Video Evidence

Several facility cameras and one handheld camera captured the events that transpired in Six East 100 Pod ("dayroom"), Six East classroom/multipurpose room ("classroom"), the female safety cell ("safety cell"), and movements to and from each location on December 2 and 3, 2021. Two facility cameras outside of Six East 100 Pod captured deputies responding to the dayroom. ECF No. 22-8 (6E 6-19 6 East Indoor Rec Towards 300 Pod ("6E Towards 300 Pod")), (6E 6-20 6 East Indoor Rec Towards Control ("6E Towards Control")). Three facility cameras recorded ten minutes inside the dayroom, which includes defendant Friedrichs' interaction with plaintiff. ECF No. 22-8 (6E 6-15 6 East Indoor Rec ("6E Indoor Rec")), (6E 0621 6 East 100 Middle), (6E 0622 6 East 100 Looking Towards Entry ("6E 100 Towards Entry")).

Three facility cameras and a handheld camera recorded plaintiff in the classroom. Two facility cameras captured plaintiff being escorted into and out of the classroom and the entire time plaintiff was in the classroom. Id. (Video 6E 0619 6 East Indoor Rec Visit ("6E Visit") at 04:26-32:29), (6E Towards 300 Pod at 03:33-31:22). A third facility camera recorded only who entered and existed the classroom. Id. (6E Towards Control at 03:33-31:25). A handheld camera began to record approximately twenty minutes after plaintiff entered the classroom, and five seconds

after defendant Solovyev entered to speak to plaintiff. Id. (6E Indoor Rec Towards Control at 23:33), (6E Visit at 24:21-24:26), (Handheld Video MVI_0145 ("Handheld") at 00:00-10:29). The handheld and facility camera recordings overlap for approximately eight minutes, id. (Handheld at 00:00-08:09), (6E Visit at 24:26-32:27), (6E Towards 300 Pod at 23:33-31:22), (6E Towards Control at 23:33-31:13). The handheld camera also recorded plaintiff's escort to the safety cell. Id. (Handheld at 07:40-10:29).

Three facility cameras and a handheld camera recorded the incident from inside and outside the safety cell. The handheld camera recorded defendant Solovyev wheel plaintiff into the safety cell and leave him there. Id. (Handheld 09:58-10:29). One facility camera captured the ninety-six minutes plaintiff was in the safety cell. Id. (BK59 Female Safety Cell ("Safety Cell") at 04:24-1:40:44). Two facility cameras recorded approximately eleven out of ninety-six minutes from outside the safety cell. Id. (BK52 Female Bkg Loop Part 1 ("Female Bkg 1") at 04:09-10:01), (BK52 Female Bkg Loop Part 2 ("Female Bkg 2") at 00:00-05:03). Lastly, two facility cameras captured plaintiff's escort to the ambulance. Id. (Video 0022.1 Garage Scanner at 11:12-11:51), (Video Vehicle SP Central Control Entry at 11:12-11:58).

D. Discussion

i. Fourteenth Amendment Medical Deliberate Indifference Claims

1. Legal Standard[5]

To establish a violation under the Fourteenth Amendment for deliberate indifference to a pretrial detainee's medical needs, the pretrial detainee must show:

> (1) the defendant made an intentional decision with respect to the conditions under which the plaintiff was confined [including a decision with respect to medical treatment]; (2) those conditions put the plaintiff at substantial risk of suffering serious harm; (3) the defendant did not take reasonable available measures to abate that

[5] Although defendants' motion for summary judgment applies the Fourteenth Amendment standard for deliberate indifference, defendants switch to the Eighth Amendment standard in their reply due to plaintiff's application of the Eighth Amendment in his opposition. See ECF No. 22-1 at 15-17; ECF No. 37 at 11-12; ECF No. 40 at 2-3. Because the evidence shows plaintiff was a pretrial detainee at the time of the alleged incidents, see ECF No. 22-4 at 79-80 (Pl's Arrest History and Summary, DEF 00076-77), the court applies the Fourteenth Amendment standard. Bell v. Wolfish, 441 U.S. 520, 535-36 (1979) (the rights of pretrial detainees, detainees who have not yet been convicted of a crime, arise under the Fourteenth Amendment).

> risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant's conduct obvious; and (4) by not taking such measures, the defendant caused the plaintiff's injuries.

Sandoval v. County of San Diego, 985 F.3d 657, 669 (9th Cir. 2021) (quoting Gordon v. County of Orange, 888 F.3d 1118, 1125 (9th Cir. 2018) (alteration in original)). "To satisfy the third element, the plaintiff must show that the defendant's actions were 'objectively unreasonable,' which requires a showing of 'more than negligence but less than subjective intent—something akin to reckless disregard.'" Id. (quoting Gordon, 888 F.3d at 1125). Although "reckless disregard" requires something less than a subjective culpable state of mind, "[t]he 'reckless disregard' standard is a formidable one." Fraihat v. U.S. Immgr. & Customs Enf't, 16 F.4th 613, 636 (9th Cir. 2021) (citations omitted).

> Neither 'mere lack of due care,' nor 'an inadvertent failure to provide adequate medical care,' nor even '[m]edical malpractice,' without more, is sufficient to meet this standard. Instead, a plaintiff must show that the defendant 'disregard[ed] an excessive risk" to the plaintiff's health and safety by failing to take 'reasonable and available measures' that could have eliminated that risk.

Id. (citations omitted).

2. Relevant Undisputed Facts[6]

a. Background

On November 9, 2021, plaintiff was arrested and three days later he was ordered released. U.S. v. Isamade, ECF Nos. 2, 3. On November 22, 2021, plaintiff was arrested and charged with eleven different penal code and vehicle violations and taken to Sacramento Jail ("Sac Jail"). DSUF ¶ 1; ECF No. 22-4 at 80 (Pl's Arrest Summary, DEF 00077). Upon arrival at Sac Jail, Adult Correctional Health ("ACH") conducted an intake, at which point, plaintiff informed ACH that he suffers from Schizophrenia and Bipolar disorders and takes medication for his diagnoses.

[6] Plaintiff disputes *all* facts but does not provide citation to evidence to dispute *each* fact. Accordingly, the undisputed facts sections throughout the undersigned's findings and recommendations only excluded those facts not supported by defendants' evidence or for which there is contrary evidence.

This particular section only contains undisputed facts relevant to plaintiff's medical deliberate indifference claims.

DSUF ¶ 2. On November 24 and 26, ACH tried to confirm plaintiff's mental health diagnoses and prescriptions but were unable to do so. DSUF ¶ 2. Between November 22, 2021, and December 2, 2021, plaintiff did not receive psychotropic medication. See ECF No. 22-5 at 16 (Tianna Hammock Declaration ("Hammock Decl.") ¶ 10).

b. Dayroom Incident

On December 2, 2021, defendant Parker-Wright, a Senior Records Officer ("SRO"), informed plaintiff that he had fifteen minutes of dayroom time. DSUF ¶ 3. On that day, she was responsible for monitoring the cameras of the Six East 100 Pod from the B control room, instructing inmates to lockdown after dayroom time, and answering intercom communications. Id. She did not physically handle inmates. Id.; ECF No. 22-7 at 30-31 (Pl's Depo. 67:23-68:2).

While plaintiff was on the phone in the dayroom, defendant Parker-Wright turned off his phone access. ECF No. 22-4 at 255 (Declaration of Aliaya Parker-Wright ("Parker-Wright Decl.") ¶¶ 9-10); ECF No. 37 at 2 (Pl's Decl." ¶ 8). Plaintiff returned to his cell, pressed the medical emergency button, which can also be used for nonemergency reasons, and spoke to defendant Parker-Wright. ECF No. 22-4 at 255 (Parker-Wright Decl. ¶ 11); ECF No. 37 at 3 (Pl's Decl. ¶ 9). Defendant Parker-Wright told plaintiff to close his cell door. Id. Plaintiff did not comply. ECF No. 22-4 at 255 (Parker-Wright Decl. ¶ 11); ECF No. 22-8 (6E Indoor Rec at 00:47-06:10). For the next five minutes plaintiff did not close his cell door, walked in and out of his cell, talked with another inmate in the dayroom, and/or stood in the doorway of his cell holding the door wide open. ECF No. 22-8 (6E Indoor Rec at 00:47-06:10).

Defendant Parker-Wright contacted Murphy,[7] informed him of the situation, and contacted Five East control room for additional support. DSUF ¶ 4; ECF No. 22-4 at 255 (Parker-Wright Decl. ¶ 13). Mora and defendant Friedrichs responded. DSUF ¶ 4. While scanning the cameras, defendant Parker-Wright saw plaintiff make advances towards Six East 100 Pod door to exit, when he was directed to return to his cell, and plaintiff get down on his knees when Murphy, Mora, and defendant Friedrichs approached him. DSUF ¶¶ 6-7; ECF No.

[7] The absence of the word "defendant" immediately before a name indicates the individual was involved but is not a defendant in this case.

22-4 at 255-256 (Parker-Wright Decl. ¶ 14). A few seconds later, a struggle between plaintiff and Murphy, Mora, and defendant Friedrichs ensued. ECF No. 22-8 (6E Indoor Rec at 6:54-07:00), (6E 100 Towards Entry 06:54-07:00). Defendant Parker-Wright made a 415-deputy involved call. ECF No. 22-4 (Parker-Wright Decl. ¶ 16). Eighteen additional deputies[8] responded, but only four provided additional assistance in restraining plaintiff. ECF No. 22-8 (6E Indoor Rec at 07:18-08:24), (6E 100 Towards Entry at 07:17-08:14). Plaintiff was brought to his feet and escorted out of the dayroom. DSUF ¶¶ 9, 11; ECF No. 22-8 (6E Indoor Rec at 08:24-08:36), (6E 100 Towards Entry at 08:25-08:36), (6E Towards Control at 02:40-03:33). Deputies did not touch plaintiff's neck or throat in the dayroom. DSUF ¶ 10; ECF No. 22-7 at 30-33, 47 (Pl's Depo. 68:6-70:15, 84:5-15). Defendant Parker-Wright's involvement in the matter ended once plaintiff was in the classroom. DSUF ¶ 4; ECF No. 22-4 at 256 (Parker-Wright Decl. ¶ 17).

c. Classroom Incident

On December 2, 2021, defendant Solovyev, a deputy, working in male booking responded to a 415-deputy involved fight initiated by defendant Parker-Wright. DSUF ¶ 12. As a WRAP cart instructor, he brought with him a WRAP restraint cart. Id.

Defendant Solovyev did not witness the incident in the dayroom. Id. When defendant Solovyev arrived, plaintiff was already seated in the classroom and had not been kneed, hit, beat, or struck by anyone. Id.; ECF No. 22-8 (6E Visit at 04:28-06:33); ECF No. 22-7 at 30-33, 47 (Pl's Depo. 68:6-70:15, 84:5-15). Defendant Solovyev's interaction with plaintiff started eighteen minutes later. ECF No. 22-8 (6E Visit at 06:33-24:21).

Because plaintiff refused to comply with defendant Solovyev's instructions to stand up and walk to his new housing unit, defendant Solovyev requested the WRAP cart and Amaya and Tibbs lowered plaintiff to the ground. Id. (Handheld at 00:00-01:45). Two deputies strapped plaintiff's ankles together. Id. Plaintiff moved his head from side to side without any issue. Id. Plaintiff was lifted and placed in the WRAP cart. Id. (Handheld 02:16-02:34). As plaintiff was wheeled to exit the classroom, plaintiff tried to eject himself off the cart. DSUF ¶ 15; ECF No.

[8] General references to "deputies" are used as a catchall for unidentified individuals in uniform.

22-8 (Handheld 02:40-02:43). Defendant Solovyev and two other deputies held him down. DSUF ¶ 15; ECF No. 22-8 (Handheld 02:40-02:43). DSUF ¶ 15; ECF No. 22-8 (Handheld at 02:43-02:58). Plaintiff turned towards Solovyev, opened his mouth, made a biting gesture towards him, and said "I'm about to bite you." DSUF ¶ 15; ECF No. 22-8 (Handheld at 02:50-02:52). Amaya and defendant Solovyev decided to use the full WRAP restraint.[9] Id. (Handheld at 02:48-02:55). The officers lifted plaintiff out of the cart, placed him on the ground, and turned him on his stomach. Id. (Handheld 03:04-03:06). While on his stomach, plaintiff freely lifted his head and talked directly to the camera. Id.

A nurse was called. Id. (Handheld 04:08-04:14). Plaintiff complained that a nurse should have been called sooner and that he was being treated this way because of his mental health. Id. (Handheld 04:29-04:37). The chest restraint was added, plaintiff was lifted into the WRAP cart, handcuffed to the cart, and a helmet was secured on his head. Id. (Handheld at 04:10-05:52). A nurse checked plaintiff's restraints. Id. (Handheld at 06:19-07:32). Plaintiff told the nurse he did not need to check the leg restraint because it was "all good" and it was "very comfortable." Id. (Handheld 06:22-06:44). The nurse responded, "I have to worry about it" and continued to examine plaintiff. Id. (Handheld 06:50-07:32).

Plaintiff did not express any concerns regarding his mental health or any injury to the nurse. Id. (06:19-07:32). During the entire time plaintiff was in the classroom, no one placed their knee(s) on or around plaintiff's neck, throat, or upper body, or otherwise hit, beat, or struck him. Id. (6E Visit at 04:27-32:09), (Handheld, 00:00-10:29). Plaintiff showed no signs of bleeding in his mouth or throat when he was in the classroom with defendant Solovyev. Id.

d. Safety Cell Incident

Defendant Solovyev wheeled plaintiff into the safety cell. Id. (Handheld at 09:58). Plaintiff asked, "Can you please leave me in here with this cart chained like this?" Id. (Handheld at 10:06-10:10). Tibbs responded, "yes." Id. Plaintiff said it's a violation of his rights but then told them to leave him there overnight. Id. (Handheld at 10:18-10:21). The cell door was closed.

[9] The WRAP restraint consists of an ankle strap, leg and chest retraining devices, a helmet and a cart. ECF No. 22-5 at 1 (Solovyev's Decl. ¶ 11).

Id. (Handheld at 10:23), (Safety Cell at 04:50). There were still no signs of blood. Id.

Because plaintiff was in a WRAP restraint, he was monitored at least twice every thirty minutes. DSUF ¶ 18. During the first forty-seven minutes, plaintiff was checked on four times. ECF No. 22-8 (Safety Cell at 08:57-09:00, 18:45-19:04, 36:37-36:53, 51:09-51:34; ECF No. 22-4 at 117 (Custody log, DEF 00114 ("Custody Log")) (2305, 2315, 2331, 2347 entries). After his first check, plaintiff tried to get out of his restraints and started to spit on the wall. ECF No. 22-8 (Safety Cell at 13:24-18:45). During his second check, plaintiff tried to talk to the person, but they were only there for about twenty seconds. Id. (Safety Cell at 18:45-19:04); see also 22-4 at 117 (Custody Log, 2315 entry). For the next sixteen minutes, plaintiff spat, coughed, and yelled on and off, before a third check was done. Id. (Safety Cell at 19:14-36:37); see also 22-4 at 117 (Custody Log) (2331 entry). For the next sixteen minutes, plaintiff spat, coughed, and maneuvered the cart so that his feet were touching the cell door. ECF No. 22-8 (Safety Cell at 41:44-51:02). During his fourth check, he started to talk and continued to talk for the next twelve minutes, through his fifth and sixth checks. Id. (Safety Cell at 51:09-1:03:50); ECF No. 22-4 at 117 (Custody Log) (2347, 2352, and 0000 entries). By then, the wall was covered in blood. ECF No. 22-6 at 60 (Pl's Depo. 34:11-24); ECF No. 22-4 at 207 (Solovyev's Interview, p.8).

Thirteen minutes after his fourth check began, a nurse entered the hallway outside the cell and waited for deputies to escort him to examine plaintiff. ECF No. 22-8 (Safety Cell at 1:03:44-1:08:33), (Female Bkg 2 at 1:05-05:02). Four minutes later, Amaya and Tibbs entered the safety cell with a nurse and the nurse examined plaintiff's mouth with a light. Id. (Safety Cell at 1:08:33-1:09:88). The nurse and plaintiff talked, the nurse grabbed a tongue depressor, and plaintiff shook his head; the nurse returned the tongue depressor without using it and lowered a spit mask over plaintiff's mouth. Id. (Safety Cell at 1:09:12-1:11:53). The nurse continued to examine plaintiff, including the exterior of his throat and neck area, before leaving. Id. (Safety Cell at 1:11:53-1:16:41). After the nurse left, plaintiff and Amaya spoke for about three minutes, the cell door closed and reopened twenty minutes later when Amaya and Solovyev entered to wheel plaintiff out of the cell. Id. (Safety Cell at 1:17:06-1:40:56).

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e. Sutter Medical Center Emergency Department

Plaintiff was transported by ambulance to the Sutter emergency department. Id. (Garage at 11:12-11:51), (Central Control Entry at 11:12-11:58); ECF No. 22-5 at 33 (Sutter Medical Records ("Medical Records"), p.8). Plaintiff arrived at the hospital on December 3, 2021, at 12:57am and was discharged at 4:52am. ECF No. 22-5 at 34 (Medical Records, p.9).

Plaintiff reported he "was knelt on around the posterior neck to be restrained" and that "[h]e started spitting up blood and having pain to the left neck. No dyspnea. No chest pain." Id. at 38 (Medical Records, p.13). Review of plaintiff's systems, including throat, respiratory, and psychiatric, were all normal. Id. at 39-40 (Medical Records, p.14-15). The following observations were recorded: "Negative for . . . sore throat, trouble swallowing and voice change"; "Respiratory: Negative for cough, shortness of breath and wheezing"; "CT shows no vascular injury nor acute traumatic abnormality"; "CTA of neck shows no traumatic injuries"; "no further episodes of spitting up blood"; "remained without any symptoms, had no change to voice"; "[n]o evidence of vascular injury"; and "[n]o large vessel occlusion or significant stenosis." Id. at 39, 41-42, 44, 55 (Medical Records, pp. 14, 16-17, 19, 30).

Plaintiff also reported he was not receiving his psychiatric medication in jail and would like them because it is causing him distress. Id. at 41 (Medical Records, p.16). On December 3, 2021, plaintiff was administered a one-time dose of medications for schizophrenia and acetaminophen (Tylenol). Id.; DSUF ¶ 2.

Plaintiff was discharged without any prescriptions. ECF No. 22-5 at 42 (Medical Records, p. 17). On December 7, 2021, ACH started psychotropic medications for plaintiff. Id.

3. Analysis

a. Claim Against Defendant Parker-Wright

i. Intentional decision

Defendants argue that plaintiff cannot establish that defendant Parker-Wright made an intentional decision with respect to the conditions under which plaintiff was confined as it relates to his schizophrenic disorder. ECF No. 22-1 at 15-16. Plaintiff responds that (1) "Defendants made an intentional decision to subdue, fight, apply control holds to plaintiff, slam plaintiff from

a seated position to the ground even after plaintiff took a seated position, raised his hand in the air and clear and clearly declared 'I give up, I surrender," and (2) "Defendants willfully pinned plaintiff to the wall, placed plaintiff in a WRAP device." ECF No. 37 at 9-10.

For medical deliberate indifference, the *conditions* at issue are those related to plaintiff's medical care. Cf. Kingsley v. Hendrickson, 576 U.S. 389 (2015) (Fourteenth Amendment standard for excessive force claims); Castro v. County of Los Angeles, 833 F.3d 1060 (9th Cir. 2016) (Fourteenth Amendment standard for failure to protect); Gordon, 888 F.3d 1118 (Fourteenth Amendment standard for inadequate medical care). Because none of the intentional acts described by plaintiff relate to the conditions of his medical care, they are best addressed under his excessive force claims.

With respect to defendants' argument, the court agrees there is no evidence that defendant Parker-Wright was involved in any decision regarding plaintiff's medication for his mental health or with respect to his mental health diagnosis. Those decisions were made by ACH.

However, the evidence shows defendant Parker-Wright made an intentional decision to contact custody staff instead of medical staff after plaintiff pushed the medical emergency button. Accordingly, the court must assess whether plaintiff can establish the other three elements.

ii. Substantial risk of suffering serious harm

Defendants argue that plaintiff cannot establish that defendant Parker-Wright put plaintiff at substantial risk of suffering serious harm when she disconnected his phone call, requested deputy assistance in locking him down in his cell, and called a 415 deputy involved fight *because she did not know* plaintiff was without medication and that ending the call would induce a mental health crisis, she did not call a 415 deputy involved fight until a physical altercation broke out, and plaintiff has no evidence that cutting off his phone access, on its own, could induce a mental health crisis. ECF No. 22-1 at 16. It appears defendants conflate the second and third elements.

What defendant knew or should have known is not at issue under the second element; it is an issue under the third element and therefore will be discussed in the next section. Russell v. Lumitap, 31 F.4th 729, 739 (9th Cir. 2022) (discussing the differences between the second and third elements of the Fourteenth Amendment deliberate indifference standard). Relevant here is

whether plaintiff can establish that he had a "serious medical need" at the time of the incident. Russell, 31 F.4th at 739 (For a "substantial risk of serious harm" for medical deliberate indifference, there must be a "serious medical need."). A "serious medical need" "is an objective standard, and includes the existence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly affects an individual's daily activities; or the existence of chronic and substantial pain." Id.

Plaintiff has not established a material dispute with respect to whether he suffered a "serious medical need." Although the evidence shows that plaintiff did not receive psychotropic medications while in Sac Jail custody from November 22, 2021, through December 2, 2021, received one-time administration of psychotropic medications on December 3, 2021, while at Sutter Medical Center ("Sutter"), and started to receive psychotropic medications on December 7, 2021, plaintiff has not put forth medical testimony or records that prior to or during the December 2, 2021 incident he suffered from a schizophrenic, bipolar, or any other mental health disorder that required medication at that time. The lack of psychotropic medication for eleven days, without a demonstrated need for it, does not create a substantial risk of harm.

Moreover, to the extent plaintiff claims that defendant Parker-Wright's decisions to terminate his phone access, contact custody staff after he pushed the medical emergency button, and/or make a 415-deputy involve call created a substantial risk of a panic and/or anxiety attack or other mental health crisis, he fails to provide evidentiary support. Contrary to plaintiff's assertion, ECF No. 37 at 11, the video evidence does not provide evidence from which a reasonable jury could conclude that plaintiff was having a medical or psychiatric emergency (i.e. had a serious medical need), see ECF No. 22-8 (6E Indoor Rec at 00:45-06:09), nor does pressing a medical emergency button, which can also be used for nonemergency purposes, twenty to thirty times, see ECF No. 1 at 3; ECF No. 22-7 at 16-17 (Pl's Depo. 53:6-54:3). Accordingly, plaintiff cannot satisfy the second element.

iii. Objective Reasonableness

Defendants argue that plaintiff cannot establish defendant Parker-Wright acted in an

objectively unreasonable manner because *she did not know* plaintiff suffered from a schizophrenic or panic/anxiety disorder and was without medication for eleven days, that ending his phone access would induce a mental health crisis, and/or that he was having a mental health crisis after she terminated his phone access. ECF No. 22-1 at 16; ECF No. 40 at 2-3. In opposition, plaintiff may be attempting to argue that because he disclosed his mental health diagnoses and medications to Sac Jail when he was arrested on November 9 and 22, defendant Parker-Wright knew or should have known he suffered from mental health disorders and that he had been without medication for eleven days. ECF No. 23 at 2; ECF No. 23-1 at 1-2; ECF No. 37 at 11 (Pl's Opposition Brief), 18 (Response to DSUF ¶ 2), at 30 (Pl's Statement of Disputed Facts ("PSDF") ¶¶ 2-4).

Because there is confusion in the briefing with respect to what culpable state of mind is required under the Fourteenth Amendment, see id.; ECF No. 37 at 11, it is worth clarifying that while the Eighth Amendment requires that the defendant be subjectively "aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference," the objectively reasonableness test under the Fourteenth Amendment does not require either subjective element. Castro, 833 F.3d at 1071. Instead, the objectively reasonableness test asks what a *reasonable* officer in defendant's position would have known, inferred, and done under the circumstances. See e.g., Sandoval, 985 F.3d at 670 (finding that a reasonable jury could conclude that a reasonable nurse who was told that Sandoval was shaking, tired, and disoriented—and who was specifically directed by a deputy to evaluate Sandoval 'more thoroughly,'" as defendant de Guzman was, "would have understood that Sandoval faced a 'substantial risk of suffering serious harm'"). Here, plaintiff fails to put forth evidence that could support a conclusion a reasonable officer in defendant Parker-Wright's position would have known or should have known that disconnecting plaintiff's phone access would cause a mental health crisis—especially where the officer's duties have nothing to do with ACH and the officer is unaware, and has no basis from which to draw an inference, that plaintiff has mental health conditions and/or has been without psychiatric medication for eleven days.

In opposition, plaintiff argues that defendant Parker-Wright knew of his serious medical

need based on camera footage showing that plaintiff returned to his cell and pressed the medical button multiple times, ECF No. 37 at 11, and because he spoke to her and requested medical. ECF No. 37 at 3 (Pl's Decl. ¶9). However, the video evidence does not confirm the number of times plaintiff pressed the emergency button. ECF No. 22-8 (6E Indoor Rec at 00:48-06:25), (6E 100 Middle at 00:48-06:25), (6E 100 Towards Entry at 00:48-06:25). And even if it did, and if plaintiff told defendant Parker-Wright that he needed medical assistance, he cannot show that a reasonable officer scanning the cameras would have contacted medical staff, particularly where no medical emergency was obvious. Moreover, this is not a situation where defendant Parker-Wright did nothing. Defendant Parker-Wright took reasonable available measures to abate the risk of serious harm to plaintiff by contacting custody staff. Custody staff arrived within five minutes and spoke with plaintiff. If plaintiff was having a medical emergency, custody staff could have called for medical staff after assessing the situation. Also, as defendants point out, even if plaintiff was having a mental health crisis, a reasonable officer would have called custody staff to secure plaintiff before medical staff could provide care.

Accordingly, plaintiff fails to establish a material dispute with respect to the third element.

iv. Causation

Defendants argue that plaintiff cannot establish defendant Parker-Wright caused plaintiff's injuries because his alleged injuries of being kneed on his throat or neck are unsubstantiated by video evidence. ECF No. 22-1 at 15-17.[10] Defendants are correct. During plaintiff's deposition, he testified that in the dayroom, while he was being restrained, the deputies "did not touch [his] throat at all or nothing." Plaintiff testified that the *kneeing* occurred in the classroom after he was escorted out of the dayroom and while *no cameras were on*, and that the deputies "had their *knees* on [his] neck holding [him] down." ECF No. 22-7 at 31-33, 47 (Pl's Depo. 68:6-12, 68:22-70:15, 84:5-15) (emphasis added). Contrary to this testimony, there were four cameras that collectively captured what transpired in the classroom, ECF No. 22-8 (6E Visit at 04:26-32:29), (6E Towards

[10] Defendants also argue that plaintiff's causation argument is unclear because he takes issue with his medication being cut off cold turkey, which was a decision by ACH, not defendant Parker-Wright. ECF No. 40 at 3. Because it's unnecessary, the court does not address this argument.

300 Pod at 03:33-31:22), (6E Towards Control at 03:33-31:25), (Handheld 00:00-08:09), and the video evidence irrefutably shows that no person in the classroom put their knee(s) on and/or otherwise hit or struck plaintiff's neck, throat, or upper body. Id. The only time someone touched plaintiff's neck in the classroom was to support plaintiff's neck when turning him over or on his side. (Handheld at 02:17-02:21, 03:05-03:07, 03:51-04:08, 04:37-04:38). Given the video evidence, no reasonable jury could believe plaintiff's version of events—that he was kneed, hit, and/or struck in the neck or throat on December 2, 2021, causing him to bleed from his esophagus—and as such, is rejected. Scott v. Harris, 550 U.S. 372, 380 (2007) ("When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.").

Plaintiff argues that his medical records, the fact that he was taken to the hospital, and that the jail nurse found no lacerations or cuts in his mouth or lips proves the bleeding was caused by defendants. ECF No. 23-1 at 2; ECF No. 37 at 10-11 (Opposition Brief), 26 (Response to DSUF ¶ 18). However, the evidence merely supports plaintiff's argument that *he* did not cause his own injury, and confirms plaintiff was taken to the hospital, *he told* hospital staff that his neck was injured by custody staff, and no injury to his neck or throat was identified by medical staff. See ECF No. 22-5 at 39, 41-42, 44, 55 (Medical Records, p.14, 16-17, 19, 30). The evidence does not establish the *cause* of the bleeding.[11] Because defendants point to the absence of medical evidence as to this element, plaintiff was required to come forward with evidence to show he can meet his burden at trial. He has not done so.

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[11] As discussed above, plaintiff's Exhibit J is excluded under Federal Rule of Civil Procedure 37(c)(1). The court notes, however, that Exhibit J does not establish an injury resulting from the incidents on December 2 or 3, 2021, or the *cause* of such injury. It merely shows that in May 2023, plaintiff had a permanent CPAM mask; it does not explain why plaintiff had it and/or what it was meant to treat.

b. Claim Against Defendant Solovyev[12]

i. Intentional decision

Defendants argue plaintiff cannot establish that defendant Solovyev instructed deputies to ignore his medical needs. ECF No. 22-1 at 17. However, they fail to meet their burden on this point.

Evidence shows a material dispute as to whether defendant Solovyev intentionally chose to delayed medical care for plaintiff. Defendants' reply and defendant Solovyev's declaration suggests that he could not have acted with deliberate indifference to plaintiff's medical needs when he was in the safety cell because defendant Solovyev did not interact with plaintiff after he left him to be monitored by other deputies. See ECF No. 22-5 at 1 (Solovyev Decl. ¶ 15); ECF No. 40 at 4. However, other evidence shows defendant Solovyev *subsequently* interacted with plaintiff, ECF No. 22-8 (Handheld at 1:40:18-1:40:56); ECF No. 22-6 at 60-61 (Pl's Depo. 34:25-35:8), and creates a material dispute as to whether defendant Solovyev, or someone else, spoke with plaintiff while he was in the safety cell, saw the blood on the wall, and delayed contacting medical staff. ECF No. 22-4 at 99 (Report 2021-368714, Tibb's Narrative, DEF 00096) (deputy Amaya badge #793), 117 (Custody Log) (2352 entry by badge #793), 207 (Case #2023PSB-557, Solovyev Interview, DEF 00204) (Solovyev testified "the blood – covered the wall. . . . *We* couldn't positively identify where the injury came from so they requests us to transport him to the hospital for a future – or for further evaluations."); ECF No. 22-6 at 60 (Pl's Depo. 34:11-24) (plaintiff testified that, during a welfare check, he saw a masculine figure that looked like defendant Solovyev and he said something like "Oh, leave him in there. He bit his tong [sic]. He bit his lips. That's where the blood is coming from," and that a nurse was not contacted until his next welfare check."). Because defendants only provide eleven of the ninety-six minutes of video evidence from outside the safety cell, see ECF No. 22-8 (Safety Cell at 04:24-1:40:44), (Female Bkg 1 at 04:10:01), (Female Bkg 2 at 00:00-05:03), the court is unable to rule out the possibility

[12] In opposition, plaintiff does not specifically address defendants' arguments regarding defendant Solovyev. Nonetheless, the court addresses plaintiff's arguments to the extent they can be interpreted to be directed at defendant Solovyev.

that defendant Solovyev, and not someone else, spoke with plaintiff and decided to hold off on contacting medical. Since the issue will turn on credibility, it is one for a jury. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986) (At summary judgment, "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.").

ii. Substantial risk of serious harm

Defendants argue that plaintiff cannot establish a substantial risk of serious harm by a decision that defendant Solovyev did not make. ECF No. 22-1 at 18. The court disagrees. As noted above, there is a material dispute with respect to whether defendant Solovyev intentionally delayed medical care for plaintiff while he was in the safety cell.

More importantly, the relevant issue here is whether a reasonable jury could find plaintiff suffered from a serious medical need—"an injury that a reasonable doctor *or patient would find important and worthy of comment* or treatment," Russell, 31 F.4th at 739 (emphasis added)—where plaintiff was spitting up blood and coughing for approximately thirty eight minutes and had covered the wall in blood by his fourth welfare check. Viewing the evidence in the light most favorable to plaintiff, the undersigned finds that a reasonable jury could reach that conclusion.[13]

iii. Objective Reasonableness

Defendants argue that defendant Solovyev's intentional decision to place plaintiff in a safety cell shows that his conduct was not unreasonable because plaintiff received heightened monitoring in the safety cell. ECF No. 22-1 at 18. This point, the court agrees.

It was not objectively unreasonable for defendant Solovyev to put plaintiff in a safety cell in a WRAP restraint. Plaintiff exhibited signs that he was a danger to *himself* and/or others. See ECF No. 22-4 at 259 – ECF No. 22-5 at 1 (Solovyev Decl. ¶ 10); ECF No. 22-8 (Handheld 02:48-

[13] To the extent plaintiff asserts he was at "substantial risk of serious harm" because he was wrapped head-to-toe, cuffed, and left in a safety cell for ninety-six minutes, see ECF No. 37 at 10, the video evidence contradicts his assertion. The lower part of plaintiff's legs were wrapped and a chest restraint secured his upper body to his lower body, but plaintiff's head was not restrained, plaintiff could move his upper body side to side and forward, and he was seated in a primarily upright position. See ECF No. 22-8 (Handheld 03:40-10:29), (Safety Cell at 04:50-1:40:56).

02:55). Defendant Solovyev took reasonable available measures to minimize the risk to plaintiff by having a nurse check his restraints, ECF No. 22-8 (Handheld at 05:45-07:32), and by placing him in a safety cell where he would be monitored. ECF No. 22-4 at 117 (Custody Log); ECF No. 22-5 at 1 (Solovyev Decl. ¶ 13); ECF No. 22-8 (Safety Cell at 04:50-1:40:56). Plaintiff was not kneed, hit, or struck in the neck, throat, or upper body, did not complain of any pain, was not bleeding, and did not exhibit any evidence of injury before he was left in the safety cell. Based on all of this, a reasonable official in defendant Solovyev's position would not have appreciated that there was a high degree of risk that plaintiff would bleed from the mouth or throat and/or choke on his blood when he was left in the safety cell in the WRAP restraint.

However, viewing the evidence in the light most favorable to plaintiff, defendants have not shown it was objectively reasonable to delay medical examination for seventeen minutes. Video evidence shows a lack of urgency—a nurse casually walks into the hallway and hangs back for minute while the deputies do the same before entering to examine plaintiff seventeen minutes after his fourth check—despite the presence of a substantial amount of blood and an unknown source of the blood. Because a reasonable jury could find defendant Solovyev was the person plaintiff spoke to during his fourth check, they could also find, as plaintiff asserts, that defendant Solovyev's failure to communicate the seriousness of the situation and delay medical care was objectively unreasonable.[14] See ECF No. 23 at 11; ECF No. 23-1 at 2; ECF No. 37 at 11.

iv. Causation

Nevertheless, plaintiff's medical deliberate indifference claim against defendant Solovyev fails because plaintiff has not identified evidence that could support the fourth element. The parties' arguments with respect to causation for defendant Solovyev are the same as those discussed with respect to defendant Parker-Wright. See ECF No. 22-1 at 17-18; ECF No. 37 at 10-11. For the reasons discussed above, the court reaches the same conclusion—plaintiff has failed to put forth evidence that defendant Solovyev's intentional acts *caused* plaintiff's bleeding and/or any other injury.

[14] DSUF ¶ 18 claims a nurse was *called* at 12:07am but none of the evidence cited supports this statement, and none of the evidence establishes when the nurse was *called*.

4. Conclusion

Defendants' motion for summary judgment on plaintiff's medical deliberate indifference claims should be granted because plaintiff has had adequate time for discovery and fails to make a showing sufficient to establish the existence the second, third, and fourth elements for his claim against defendant Parker-Wright and the fourth element for his claim against defendant Solovyev. Oracle Corp., 627 F.3d at 387 ("Where the non-moving party bears the burden of proof at trial, the moving party need only prove that there is an absence of evidence to support the non-moving party's case." (citing Celotex, 477 U.S. at 325)). Considering this recommendation, the court declines to address defendants' exhaustion and qualified immunity defenses to these claims.

ii. Fourteenth Amendment Excessive Force Claims

1. Legal Standard

Under the Fourteenth Amendment, "a pretrial detainee must show only that the force purposely or knowingly used against him was objectively unreasonable." Kingsley v. Hendrickson, 576 U.S. 389, 396-97 (2015). "[O]bjective reasonableness turns on the 'facts and circumstances of each particular case'" and must be determined "from the perspective of a reasonable officer on the scene, including what the officer knew at the time, not with the 20/20 vision of hindsight." Id. at 397 (quoting Graham v. Connor, 490 U.S. 386, 396 (1989)). "A court must also account for the 'legitimate interests that stem from [the government's] need to manage the facility in which the individual is detained." Id. (citing Bell v. Wolfish, 441 U.S. 520 (1979)).

> Considerations such as the following may bear on the reasonableness or unreasonableness of the force used: [1] the relationship between the need for the use of force and the amount of force used; [2] the extent of the plaintiff's injury; [3] any effort made by the officer to temper or to limit the amount of force; [4] the severity of the security problem at issue; [5] the threat reasonably perceived by the officer; and [6] whether the plaintiff was actively resisting.

Id. at 397. Whether the individual "posed an immediate threat to the safety of the officers or others" is the most important consideration. Mattos v. Agarano, 661 F.3d 433, 441 (9th Cir. 2011) (citing Graham, 490 U.S. at 396). "[A] simple statement by an officer that he fears for his safety or the safety [of] others is not enough; there must be objective factors to justify such a concern." Bryan v. MacPherson, 630 F.3d 805, 826 (9th Cir. 2010) (citation and quotation

omitted). The absence of a serious or significant injury is not outcome determinative. See Hudson v. McMillian, 503 U.S. 1, 4, 7 (1992) (holding that a serious injury is not necessary to establish excessive force).

Excessive force cases often turn on credibility determinations, and "[the excessive force inquiry] nearly always requires a jury to sift through disputed factual contentions, and to draw inferences therefrom." Smith v. City of Hemet, 394 F.3d 689, 701 (9th Cir. 2005) (alteration in original) (quoting Santos v. Gates, 287 F.3d 846, 853 (9th Cir. 2002)). Therefore, "summary judgment or judgment as a matter of law in excessive force cases should be granted sparingly." Id. (quoting Santos, 287 F.3d at 853). The Ninth Circuit has repeatedly held "that the reasonableness of force used is ordinarily a question of fact for the jury." Liston v. County of Riverside, 120 F.3d 965, 976 n.10 (9th Cir. 1997), as amended (October 9, 1997).

2. Excessive Force Claim Against Defendant Parker-Wright

a. Undisputed Facts

On December 2, 2021, defendant Parker-Wright was responsible for monitoring the cameras of the Six East 100 Pod from the B control room, instructing inmates to lockdown after dayroom time, and answering intercom communications. DSUF ¶ 3. She informed plaintiff he had fifteen minutes of dayroom time. Id. While plaintiff was on the phone in the dayroom, defendant Parker-Wright turned off his phone access. ECF No. 22-4 at 255 (Parker-Wright Decl. ¶¶ 9-10); ECF No. 37 at 2 (Pl's Decl. ¶ 8). Plaintiff returned to his cell, pressed the medical emergency button, which can be used for nonemergency reasons, and spoke to defendant. ECF No. 22-4 at 255 (Parker-Wright Decl. ¶ 11); ECF No. 37 at 3 (Pl's Decl. ¶ 9). Defendant Parker-Wright told plaintiff to close his cell door. Id. Plaintiff did not comply. ECF No. 22-4 at 255 (Parker-Wright Decl. ¶ 11). For the next five minutes plaintiff kept his cell door open and walked in and out of his cell to the dayroom. ECF No. 22-8 (6E Indoor Rec at 00:47-06:10).

Defendant Parker-Wright contacted Murphy, informed him of the situation, and contacted Five East control room for additional support. DSUF ¶ 4. Mora and defendant Friedrichs responded. Id. While scanning the cameras, defendant Parker-Wright saw plaintiff make advances towards the exit after he was directed to return to his cell, and plaintiff get down on his

knees when Murphy, Mora, and defendant Friedrichs approached him. DSUF ¶¶ 6-7; ECF No. 22-4 at 255-256 (Parker-Wright Decl. ¶ 14). A few seconds later, a struggle ensued. ECF No. 22-8 (6E Indoor Rec at 6:54-07:00), (6E 100 Towards Entry 06:54-07:00). Defendant Parker-Wright made a 415-deputy involved call. ECF No. 22-4 (Parker-Wright Decl. ¶ 16). Eighteen additional deputies responded, but only four provided additional assistance in restraining plaintiff. ECF No. 22-8 (6E Indoor Rec at 07:18-08:24), (6E 100 Towards Entry at 07:17-08:14). Plaintiff was escorted out of the dayroom. DSUF ¶¶ 9, 11; ECF No. 22-8 (6E Indoor Rec at 08:24-08:36), (6E 100 Towards Entry at 08:25-08:36), (6E Towards Control at 02:40-03:33).

Deputies did not touch plaintiff's neck or throat when they physically restrained plaintiff in the dayroom. DSUF ¶ 10; ECF No. 22-7 at 30-33, 47 (Pl's Depo. 68:6-70:15, 84:5-15). Defendant Parker-Wright did not physically handle plaintiff, and her involvement in the matter ended once plaintiff was in the classroom. DSUF ¶¶ 3-4; ECF No. 22-4 at 256 (Parker-Wright Decl. ¶ 17); ECF No. 22-7 at 30-31 (Pl's Depo. 67:23-68:2).

b. Analysis - Objective Reasonableness of Force Used

Defendants argue that plaintiff's excessive use of force claim against defendant Parker-Wright fails because she did not physically touch plaintiff, and to the extent plaintiff argues that making a 415 deputy involved fight call constitutes use of excessive force, it was not objectively unreasonable for her to call a 415 deputy involved fight after plaintiff was involved in a physical altercation with Murphy, Mora, and defendant Friedrichs. ECF No. 22-1 at 22. In opposition, plaintiff argues that defendant Parker-Wright "misled the officers to subdue [him] instead of offer [him] medical assistance," and acted with bias when she initiated a 415-deputy involved response after he had already surrendered. ECF No. 23 at 3, 4; see also ECF No. 37 at 14, 20.

Defendants' first argument is wrong on the law. Conduct that does not involve physical contact between defendant and plaintiff can give rise to an actionable claim for excessive force. A supervisor can be liable for excessive force for his "personal involvement" in ordering use of force and/or their inaction during the use of force, Rodriguez v. County of Los Angeles, 891 F.3d 776, 798 (9th Cir. 2018), or when the conduct (use of force lacking physical contact) is objectively unreasonable. Robinson v. Solano County, 278 F.3d 1007 (9th Cir. 2002) (en banc)

(pointing a gun at an unarmed suspect could give rise to an excessive force claim). Here, however, although plaintiff asserts defendant Parker-Wright instructed deputies to use force, he provides no evidence that she was their supervisor or that she directed them to use force. Instead, the evidence shows defendant Parker-Wright contacted deputies to respond to a situation where plaintiff refused to lock down and Murphy, Mora, and defendant Friedrichs responded as they saw fit. When plaintiff failed to comply with nondefendant Murphy's instruction to lock down in his cell, and walked away from his cell, they decided to handcuff him. Because plaintiff made a sudden movement towards defendant Friedrichs while they were handcuffing him, they decided to transitorily pin plaintiff's chest on the table and lower him to the ground. There is no evidence they were acting under orders from defendant Parker-Wright or anyone else.

Plaintiff also fails to provide evidence that defendant Parker-Wright's decision to contact Murphy, Mora, and defendant Friedrichs to respond to the situation and/or make a 415-deputy involved call after a struggle ensued between plaintiff and the deputies was objectively unreasonable. Defendant Parker-Wright tried to temper or limit the amount of force by instructing plaintiff to lock down. After he failed to comply for about five minutes, she contacted deputies to respond. When the situation rapidly evolved to a physical struggle between plaintiff, Murphy, Mora, and defendant Friedrichs, where plaintiff was resisting, it was objectively reasonable to make a 415-deputy involved call to address the increase to the severity of the problem and threat. These factors, along with the lack of injury, show defendant Parker-Wright's actions were not objectively unreasonable.

Plaintiff attempts to use defendant Parker-Wright's statement that she was made aware of the fact that plaintiff was a "problematic inmate" as evidence of her bias and/or "malicious intent." ECF No. 37 at 15. Subjective intent, however, is not relevant to the objective reasonableness analysis. Graham, 490 U.S. at 397 ("the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.") (citations omitted). Instead, to prove his claim, plaintiff must put forth evidence that the circumstances were different than those currently established by the evidence, and that under those circumstances a reasonable officer would not

have called deputies to respond to plaintiff's failure to lock down or made a 415-deputy involved call after a struggle ensued. Plaintiff has not met this burden.

3. Excessive Force Claim Against Defendant Friedrichs

a. Undisputed Facts

On December 2, 2021, defendant Parker-Wright contacted Five East control room for additional support in responding to plaintiff's failure to lock down. DSUF ¶ 4. Mora and defendant Friedrichs responded. Id. Murphy instructed plaintiff to go in his cell and close the door. DSUF ¶ 6; ECF No. 37 at 3 (Pl's Decl. ¶¶ 11-12), 20 (Response to DSUF ¶ 6). Plaintiff, who appeared agitated, did not comply. Id. Instead, he walked towards the deputies, pointed and motioned his hands towards them, turned around before reaching them, walked back towards his cell, passed his cell, walked to a table, dropped to his knees and put his hands in the air. DSUF ¶¶ 6-7; ECF No. 22-8 (6E Indoor Rec at 06:24-6:41). When the deputies approached, Murphy placed plaintiff's right hand behind his back, while defendant Friedrichs placed plaintiff's left hand behind his back. DSUF ¶ 7; ECF No. 37 at 3 (Pl's Decl. ¶ 12); ECF No. 22-8 (6E 100 Towards Entry 06:46-06:50). At this time, plaintiff had a piece of paper in his left hand and faced forward. ECF 22-8 (6E 100 Towards Entry 06:46-06:50). Plaintiff turned his head to the right to talk to Murphy, but did not move his body. Id. (6E 100 Towards Entry 06:51-06:52). When defendant Friedrichs took the piece of paper out of plaintiff's hand and threw it on the table, plaintiff suddenly turned his head towards defendant Friedrichs and shifted his left knee backwards. Id. (6E 100 Towards Entry 06:52-06:53); DSUF ¶ 7. Murphy and defendant Friedrichs briefly pinned plaintiff's chest against the table in front of him. DSUF ¶ 8; ECF No. 22-8 (6E 100 Towards Entry 06:54-06:55). A struggle ensued. DSUF ¶¶ 7-8; ECF No. 22-8 (6E Indoor Rec at 06:55-06:57), (6E 100 Towards Entry at 06:55-06:57). Murphy and defendant Friedrichs pushed plaintiff towards the ground while trying to maintain control of his arms. Id. Mora tried to secure plaintiff's legs. Id.

Plaintiff was told no less than three times to stop resisting and give up his hands. DSUF ¶ 8. Plaintiff broke his hands free, and walked them towards the table, away from Murphy and defendant Friedrichs. Id.; ECF No. 22-8 (6E Indoor Rec at 06:57-07:00). Murphy and defendant

Friedrichs tried to turn plaintiff on his stomach, but he was uncooperative. DSUF ¶ 8; ECF No. 22-8 (6E Indoor Rec at 07:00-07:10). As plaintiff continued to resist, defendant Friedrichs kneeled on the ground and tried to regain control of plaintiff's left arm, and Murphy, wrapped his arms around plaintiff's torso to regain control of plaintiff's right arm. Id. Defendant Friedrichs pulled plaintiff's left arm from underneath him, causing plaintiff to fall onto his chest. DSUF ¶ 8; ECF No. 22-8 (6E Indoor Rec at 07:11-07:12). Defendant Friedrichs laid on the ground next to plaintiff while restraining plaintiff's left arm. ECF No. 22-8 (6E Indoor Rec at 07:11-07:33).

Once handcuffed, Murphy and defendant Friedrichs lifted plaintiff to his feet and began to escort him out of the dayroom. DSUF ¶ 9; ECF No. 22-8 (6E Indoor Rec at 08:24-08:25). Plaintiff resisted moving forward by pulling back and twisting his body side to side. DSUF ¶ 9; ECF No. 22-8 (6E Indoor Rec at 08:25-08:36). Defendant Friedrichs placed his left arm in between plaintiff's right arm and torso and cupped plaintiff's right shoulder with his left hand. DSUF ¶ 9; ECF No. 22-8 (6E Indoor Rec at 08:32). As they approach the door to exit, plaintiff resisted; nondefendant Murphy pushed plaintiff back in the direction of the door as defendant Friedrichs pulled him in the same direction. ECF No. 22-8 (6E 100 Towards Entry at 08:34-08:35), (6E Towards Control at 02:40-2:42). With the assistance of two other deputies, plaintiff was pinned against the wall to the left of the door. Id. (6E 100 Towards Entry at 08:35-08:36). Seubert replaced Murphy, whose arm was pinned between the wall and plaintiff's body, and plaintiff was escorted to the classroom. DSUF ¶¶ 9, 11; ECF No. 22-8 (6E 100 Towards Entry at 08:45-08:59), (6E Towards 300 Pod at 03:14-03:33).

Plaintiff's neck and throat were not injured in the dayroom. DSUF ¶ 10; ECF No. 22-7 at 31-33, 47 (Pl's Depo. 68:6-70:15, 84:5-15). Approximately thirty-two second after plaintiff was escorted into the classroom, defendant Friedrichs' physical contact with plaintiff ended. ECF No. 22-8 (6E Visit at 04:30-32:30), (Handheld 00:00-10:29).

b. Analysis - Objective Reasonableness of Force Used

Defendants argue that plaintiff's claim against defendant Friedrichs fails because defendant Friedrichs' use of force was objectively reasonable, and the injury alleged was not caused by defendant Friedrichs. ECF No. 22-1 at 23. Plaintiff responds that evidence shows he

did not resist. ECF No. 23 at 5; see also ECF No. 37 at 15-16. Specifically, plaintiff claims the following: after plaintiff surrendered, Murphy and defendant Friedrichs approached him from behind and "instantly pulled [him] off the stool to [his] knees violently. [He] still stayed calm and co-operative [sic] with [his] hands in the air," ECF No. 37 at 3 (Pl's Decl. ¶ 13); defendant Friedrichs "violently snatched [his] legal document out [his] hands and shoved [him]," id. (Pl's Decl. ¶ 14); plaintiff "turned" and "advised [defendant Friedrichs] that it was his legal paperwork for [his] case," and "stayed kneeled down with [his] hands up until Friedrichs slammed [him] violently on the ground, pulling [him] away from deputy Murphy who was handcuffing [his] right hand," id. at 4 (Pl's Decl. ¶ 15), 31 (PSUF ¶ 5); Murphy, Mora, and defendant Friedrichs "all applied their body weight upon plaintiff, riding plaintiff like an animal even while submitted to handcuffs," id. at 31 (PSUF ¶ 5); while plaintiff was being escorted, plaintiff did not pull away and did not have unpredictable behavior that required changing holds, ECF No. 23 at 6 (Initial Response to DSUF ¶ 9); and when plaintiff was pinned against the wall, "up to 20 deputies exert[ed] full control on [his] body." ECF No. 37 at 4 (Pl's Decl. ¶ 19).

Video evidence irrefutably contradicts plaintiff's version of events. Although plaintiff surrendered and was on his knees, and his hands were behind his back when the struggle ensued, video evidence shows that plaintiff suddenly turned his head towards defendant Friedrichs and shifted his weight. In response, Murphy and defendant Friedrichs briefly pinned plaintiff against the table. Defendant Friedrichs did not tackle or ride plaintiff, or slam (forcefully push) plaintiff into the ground. When plaintiff continued to resist their efforts to secure his hands, defendant Friedrichs pulled plaintiff's arm from under him, causing plaintiff's upper body to hit the ground. When defendant Friedrichs did this, plaintiff was not standing or kneeling; plaintiff's lower body was already on the ground and plaintiff's upper body was already leaning towards the ground. ECF No. 22-8 (6E Indoor Rec at 07:11-07:12). As defendant Friedrichs tried to regain control of plaintiff's left arm, he did not apply his body weight upon plaintiff; he kneeled, leaned, or laid on the ground *next to* plaintiff. Id. (6E Indoor Rec at 06:57-07:33).

Applying the objectively reasonable factors to the undisputed facts, the undersigned finds that a reasonable jury could not conclude that defendant Friedrichs' use of force at this point was

objectively unreasonable. Considering plaintiff was agitated, had walked towards the deputies pointing and waving his arms at them, refused to lock down when ordered to do so in the thirty seconds leading up to this point, and had refused to lock down in the five minutes before the deputies arrived, it was not objectively unreasonable for defendant Friedrichs to briefly pin plaintiff's chest to the table in front of him and take him to the floor to prevent plaintiff from harming him, Murphy, and/or Mora. Plaintiff was repeatedly told to stop resisting but he did not. Although plaintiff's resistance was not substantial, neither was the amount of force used. Plaintiff's complaint alleged he was kneed in the neck or throat, but he testified that no one touched his neck or throat while he was in Six East 100 Pod, and as noted before, he fails to put forth evidence of an injury. Even though lack of injury is not outcome determinative, here it confirms what the other factors already show—that the amount of force used was reasonable under the circumstances.

Similarly, while plaintiff claims he was not resisting as he was being escorted out of Six East 100 Pod, the video evidence contradicts this and further contradicts his testimony that twenty officers pinned him against the wall. Given plaintiff's resistance at this point, it was not objectively unreasonable for defendant Friedrichs and three other deputies to transitorily pin plaintiff against the wall to regain control and complete the escort. Moreover, plaintiff has not put forth evidence that any of the force used *by* defendant Friedrichs at this point caused injury or was excessive. Instead, he complains about the amount of force used by Murphy and Seubert, who are not defendants in this case, and are therefore irrelevant to this discussion.[15]

4. Excessive Force Claim Against Defendant Solovyev

a. Undisputed Facts

On December 2, 2021, defendant Solovyev, a deputy, working in male booking responded to a 415-deputy involved fight initiated by defendant Parker-Wright. DSUF ¶ 12. As a WRAP

[15] Plaintiff also argues that defendant Friedrichs retaliated against him by failing to provide plaintiff with written notice for the referral for criminal prosecution, engaged in "malicious prosecution," and violated 18 U.S.C. §§ 241, 242, and 1512(b)(3). ECF No. 23 at 5-6; ECF No. 37 at 16. The complaint, however, did not allege any of these claims against defendant Friedrichs. These claims, therefore, are irrelevant in this case and warrant no further discussion.

cart instructor, he brought with him a WRAP restraint cart. Id.

Defendant Solovyev did not witness the incident in the dayroom. Id. When defendant Solovyev arrived, plaintiff was already seated in the classroom and had not been kneed, hit, beat, or struck by anyone. Id.; ECF No. 22-8 (6E Visit at 04:28-06:33); ECF No. 22-7 at 30-33, 47 (Pl's Depo. 68:6-70:15, 84:5-15). Defendant Solovyev's interaction with plaintiff started eighteen minutes later. ECF No. 22-8 (6E Visit at 06:33-24:21).

While plaintiff was seated and handcuffed, defendant Solovyev informed plaintiff that he was going to be moved to the eighth floor because of the incident in the dayroom. DSUF ¶ 14; ECF No. 22-8 (Handheld at 00:00-00:12). Plaintiff asked if he could get his legal paperwork. DSUF ¶ 14; ECF No. 22-8 (Handheld at 00:00-00:12). Defendant Solovyev informed him that it would be collected for him and transferred to the eighth floor and instructed plaintiff to stand up and walk. DSUF ¶ 14; ECF No. 22-8 (Handheld at 00:12-01:21). Plaintiff did not comply. ECF No. 22-8 (Handheld 01:19-01:22). Nondefendants Amaya, who was situated to plaintiff's left, and Tibb, who was situated to plaintiff's right, helped plaintiff stand up and pulled up his pants, which had fallen during the initial struggle to handcuff him and again as he was being escorted to the classroom. Id. (Handheld at 01:10-01:25), (6E Indoor Rec at 07:00-07:21, 8:32-08:35), (6E Towards Control at 02:41, 3:15-03:33). Defendant Solovyev explained that plaintiff had already been given a chance. DSUF ¶ 14; ECF No. 22-8 (Handheld at 01:25-01:29). Plaintiff dropped to his knees, begged defendant Solovyev, and refused to stand up when defendant Solovyev directed him to do so. ECF No. 22-8 (Handheld at 01:25-01:29).

Because plaintiff refused to comply with defendant Solovyev's instructions to stand up and walk to his new housing unit, defendant Solovyev requested the WRAP cart and Amaya and Tibbs lowered plaintiff to the ground. Id. (Handheld at 00:00-01:45). Two deputies strapped plaintiff's ankles together. Id. Plaintiff moved his head from side to side without any issue. Id. Plaintiff was lifted and placed in the WRAP cart. Id. (Handheld 02:16-02:34). As plaintiff was wheeled to exit the classroom, plaintiff tried to eject himself off the cart. DSUF ¶ 15; ECF No. 22-8 (Handheld 02:40-02:43). Defendant Solovyev and two other deputies held him down on the cart. DSUF ¶ 15; ECF No. 22-8 (Handheld 02:40-02:43). DSUF ¶ 15; ECF No. 22-8 (Handheld

at 02:43-02:58). Plaintiff turned towards Solovyev, opened his mouth, made a biting gesture towards him, and said "I'm about to bite you." DSUF ¶ 15; ECF No. 22-8 (Handheld at 02:50-02:52). Two deputies placed their hands on the top and side of plaintiff's face and turned plaintiff's face away from defendant Solovyev and held it for about seven seconds before letting go. ECF No. 22-8 (Handheld at 02:52-02:57). Amaya and defendant Solovyev decided to use the full WRAP restraint. Id. (Handheld at 02:48-02:55). The officers lifted plaintiff out of the cart, placed him on the ground, and turned him on his stomach. Id. (Handheld 03:04-03:06). While on his stomach, plaintiff freely lifted his head and talked directly to the camera. Id. The chest restraint was added, and plaintiff was moved to a sitting position. Id. (Handheld at 04:10-05:10).

Plaintiff was lifted into the WRAP cart, handcuffed to the cart, and a helmet was secured on his head. Id. (Handheld at 05:12-05:52). A nurse checked plaintiff's restraints. Id. (Handheld at 06:19-07:32). Plaintiff told the nurse he did not need to check the leg restraint because it was "all good" and it was "very comfortable." Id. (Handheld 06:22-06:44). The nurse responded, "I have to worry about it" and continued to examine plaintiff. Id. (Handheld 06:50-07:32). Plaintiff did not express any concerns regarding his mental health or any injury to the nurse. Id. (06:19-07:32).

While plaintiff was secured in the classroom and escorted to the safety cell, plaintiff continued to make statements that indicated he might be a danger to himself or others. He told a female deputy that she should call a man to do her job because "this is dangerous," "see I can still push," and he pressed his feet against her leg. Id. (Handheld 04:45-05:02). He told defendant Solovyev, "Listen, listen. I'm about to kill your daughter. Slap me for it. Hey, listen. Listen. I'm about to bite you. Hey, hey, hey Solovyev, I'm about to bite you. Slap me for it." Id. (Handheld at 07:30-07:40). Plaintiff also told Solovyev to hit him, torture him, make it gory, make sure he "suffered tremendously," to send him underground because "I'm about to bite you," and that he (plaintiff) could kill Solovyev and get away with it because of his mental health issues. Id. (Handheld at 08:09-09:04). During the entire time plaintiff was in the classroom and escorted to the safety cell, no defendant or deputy placed their knee(s) on or around plaintiff's neck, throat, or upper body, or otherwise hit or beat him. Id. (6E Visit at 04:27-32:09),

(Handheld, 00:00-10:29).

b. Analysis – Objective Reasonableness of Force Used

Defendants argue that plaintiff's excessive use of force claim against defendant Solovyev fails because it was objectively reasonable for Solovyev to transport plaintiff in the WRAP cart after plaintiff failed to stand and walk and to fully restrain plaintiff using a WRAP restraint after plaintiff attempted to eject himself from the cart and to bite Solovyev. ECF No. 22-1 at 23. Plaintiff does not dispute that he dropped to his knees but explains that it was not him acting out, it was him trying to beg defendant Solovyev to let him get his legal paperwork, and that he did not try to bite anyone or make a forward motion with an intent to bite anyone. ECF No. 23 at 9; ECF No. 37 at 6-7 (Pl's Decl. ¶ 35), 24-25 (Response to DSUF ¶¶ 14-16).

Applying the objectively reasonable factors to the facts and viewing the evidence in the light most favorable to plaintiff, the undersigned is unable to find that a reasonable jury could conclude that defendant Solovyev's use of force was objectively unreasonable. Cf. Tatum v. City of Cnty. of San Francisco, 441 F.3d 1090 (9th Cir. 2006) (holding that an officer's use of a restrictive hold was objectively reasonable because, although the defendant was being arrested for non-severe conduct, the defendant was resisting arrest and "posed a threat to himself, to the police, and possibly to anyone who passed by him" as he spun away and continued to struggle); Rocha v. City of Antioch, No. 19-cv-7312 MMC, 2021 WL 916910, at *3, 2021 U.S. Dist. LEXIS 46091, at *8-9 (N.D. Cal. Mar. 10, 2021) (finding no excessive force claim based on use of WRAP restraint where undisputed evidence showed plaintiff was not compliant and was a danger to himself and others); Huerta v. City of Santa Barbara, No. 17-cv-6225 TJH (JEMx), 2019 WL 4860923, at *1, 2019 U.S. Dist. LEXIS 171521, at *7-8 (C.D. Cal. Oct. 1, 2019) (finding no excessive force claim based on use of WRAP restraint where undisputed evidence showed plaintiff refused to comply with requests to voluntarily leave and resisted arrest, and had to be carried down a flight of stairs); Garcia v. City of Santa Clara, No. C 10-2424 SI (pr), 2015 WL 5299460, at *11, 2015 U.S. Dist. LEXIS 120086, at *36 (N.D. Cal. Sept. 9, 2015) (finding use of wrap restraint to carry plaintiff to the police car was "not severe" where plaintiff continued to struggle despite being handcuffed).

By the time plaintiff was interacting with defendant Solovyev, plaintiff had refused to comply with orders to lockdown in his cell, refused to comply and resisted efforts to handcuff him, and resisted efforts to escort him out of Six East 100 Pod. Despite plaintiff's statements that he would comply with orders given to him, he refused to stand and walk when defendant Solovyev ordered him to do so. Because plaintiff was being uncooperative, but did not appear to be a danger to himself or others, deputies lowered him to the ground, added an ankle restraint, and lifted him into the WRAP cart to be transported. Defendant Friedrichs did not add the leg and chest restraints. Only after plaintiff tried to eject himself out of the moving cart and to bite defendant Solovyev, did Amaya and defendant Solovyev decide full WRAP restraints were necessary to protect plaintiff from himself and protect others from him. The leg and chest restraints were added, plaintiff's handcuffs were secured to the WRAP cart, a helmet was secured to plaintiff's head, and plaintiff was cleared by a nurse before transport. At no point during this time was plaintiff kneed, struck, or hit in the neck, throat, or upper body, or otherwise beaten. Moreover, plaintiff puts forth no evidence of any injury. Although lack of injury is not outcome determinative, this factor combined with all the other factors, further supports the court's finding that the amount of force used was reasonable under the circumstances.

5. Conclusion Regarding Plaintiff's Excessive Force Claims

The evidence, even when viewed in the light most favorable to plaintiff, does not support a reasonable jury conclusion that the force used by defendants Parker-Wright, Friedrichs and/or Solovyev was objectively unreasonable. The undersigned accordingly recommends that defendants' motion be granted on these claims. Considering this recommendation, the court declines to reach defendants' assertion of qualified immunity and their challenges to various forms of relief sought by plaintiff.

iii. Fourteenth Amendment Equal Protection Clause Claim

1. Legal Standard

The Fourteenth Amendment's Equal Protection Clause requires the State to treat all similarly situated people equally, City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439, (1985) (citation omitted), and "[p]risoners are protected under the Equal Protection Clause of the

Fourteenth Amendment from invidious discrimination based on race." Wolff v. McDonnell, 418 U.S. 539, 556 (1974) (citation omitted). "Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause." Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 265 (1977). To survive a motion for summary judgment, "a plaintiff must only produce evidence sufficient to establish a genuine issue of fact as to the defendant's motivations." FDIC v. Henderson, 940 F.2d 465, 471 (9th Cir. 1991) (footnote omitted).

2. Undisputed Facts

Defendant Solovyev's last name is of Russian origin. ECF No. 22-5 at 1 (Solovyev Decl. ¶ 12). During defendant Solovyev's interaction with plaintiff on December 2, 2021, defendant Solovyev did not comment on plaintiff's race or ethnicity. DSUF ¶ 16; ECF No. 22-5 at 1 (Solovyev Decl. ¶ 14); ECF No. 22-8 (Handheld at 00:00-10:18).

Plaintiff, however, made several comments to the deputies, including defendant Solovyev. DSUF ¶ 16; ECF No. 22-8 (Handheld at 00:00-10:29). When deputies were securing plaintiff to the WRAP cart, plaintiff stated, "you think because I'm black; I'm African American you think, bro. All you racist mother fuckers, you all going to suffer for this. I guarantee you. I'm going to have you in court." Id. (Handheld at 05:07-05:26). Once secured, plaintiff stated, "this is how I'm being treated for my mental health. For my mental health. No violence, just for my mental health." Id. (Handheld at 05:54-06:00). Defendant Solovyev responded, "no, you tried to bite a deputy." Id. (Handheld at 06:00-06:01). Plaintiff responded by insulting defendant Solovyev, calling him "a foolish, dumb, white prick racist [inaudible]" and saying "you are a bastard. A bastard. You're nothing." Id. (Handheld 06:10-06:42). Plaintiff repeatedly called defendant Solovyev a "dumb fool" and a "bastard," id. (Handheld at 07:05-07:26) and said "you're not going to get promoted for life Solovyev. Whatever, I just know the spelling of your Russian stupid bastard name. You're a bastard. Send me to underground nigger," id. (Handheld at 8:46-08:55), and "you're not educated, you just got a GED. Dumbass mother fucker. You're dumb, uneducated. What is hurting you right now is an uneducated disease. Racism." Id. (Handheld at 9:11-9:20).

At plaintiff's deposition, plaintiff testified that defendant Solovyev "didn't say nothing about black or N-word," never called plaintiff a "Jew" or said a bad word related to plaintiff being "Jewish," and did not make "anti-Semitic remarks." DSUF ¶ 17; ECF No. 22-7 at 39-42 (Pl's Depo. 76:10-79:14).

3. Analysis – No Equal Protection Clause Violation

Defendants argue that plaintiff cannot establish defendant Solovyev discriminated against him based on race[16] because there is no evidence that plaintiff was "racially disparaged or verbally accosted by Deputy Solovyev." ECF No. 22-1 at 25-26 (Def's MSJ Brief). In opposition, plaintiff argues that "defendants" violated the Equal Protection Clause by permanently depriving him of his property (legal documents), without any due process. ECF No. 37 at 16. In response to DSUF paragraph seventeen, which quotes plaintiff's deposition testimony the lack of discriminatory statements made by defendant Solovyev, plaintiff states he was under the influence of a category IV narcotic the day of his deposition, which he did not disclose out of "uncertainty of being judged by the defendants and fear for failing any court expectations surround controlled substances." ECF No. 37 at 25 (Response to DSUF ¶ 17).

As an initial matter, the response in plaintiff's supplemental brief regarding this claim is unresponsive, or as defendants' frame it, nonsensical. Arguments concerning a deprivation of life, liberty, and property without due process are not arguments in support of an Equal Protection Clause claim; they are arguments regarding a Fourteenth Amendment due process claim, which was not alleged in the complaint and is not at issue in this case. See Tellis v. Godinez, 5 F.3d 1314, 1316 (9th Cir. 1993) (to warrant protection under the Fourteenth Amendment Due Process Clause, a plaintiff must establish that their life, liberty, or property interest is at stake); ECF No. 1; ECF No. 7. Accordingly, those arguments are disregarded.

Plaintiff's attempt to undermine his deposition testimony also fails. Plaintiff does not

[16] Defendants also argue plaintiff cannot establish defendant Solovyev discriminated against him based on religion. ECF No. 22-1 at 26. However, plaintiff's religious claims were dismissed, and therefore are no longer at issue. See ECF No. 11; ECF No. 22-7 at 40 (Pl's Depo. 77:13-21) (with respect to his religious claims, plaintiff testified that he was not pursuing those claims because defendant Solovyev might not have said something about plaintiff's religion)

provide proof that he was under the influence of a narcotic on the day of his deposition, April 19, 2024, nor does he state how the medication impacted his ability to be truthful or otherwise impaired his testimony. See ECF No. 22-6 at 27 (Pl's Depo. Cover Page). To the extent plaintiff offers Exhibit L for this purpose, even if the court had not excluded this document, Exhibit L does not show what plaintiff implies it shows because the records show the medication was started several months after plaintiff's deposition. See ECF No. 37 at 77. Moreover, plaintiff's response does not *identify* evidence to support his claim, which supports defendants' argument that plaintiff cannot prove his claim.

Because there is no evidence to permit a reasonable trier of fact to find by a preponderance of the evidence that defendant Solovyev's decisions were racially motivated, the undersigned recommends defendants' motion for summary judgment on this claim be granted.

iv. First Amendment – Retaliation

1. Legal Standard

"Within the prison context, a viable claim of First Amendment retaliation entails five basic elements: (1) an assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal. Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005) (citations omitted).

2. Undisputed Facts

On December 2, 2021, while plaintiff was in the classroom and transported to the safety cell, plaintiff indicated he was going to sue defendant Solovyev and other deputies for their conduct. ECF No. 22-8 (Handheld at 02:59-03:47, 04:10-04:38, 05:01-06:30, 07:07-10:03). On December 3, 2021, defendant Friedrich submitted his report about the incident that occurred on December 2, 2021, in the dayroom, not the classroom or safety cell. ECF No. 22-4 at 90 (Report 2021-368714, DEF 00087). The report lists defendant Friedrichs and Murphy as victims; and plaintiff as the suspect. ECF No. 22-4 at 90-91, 93-96 (Report 2021-368714, DEF 00087-88, 00090-92). Defendant Solovyev is not listed as a victim, did not author or write a narrative for the report. ECF No. 22-4 at 90-106 (Report 2021-368714, DEF 00087-103).

O'Connor approved the report on December 5, 2021. DSUF ¶ 20; ECF No. 22-4 at 90 (Report 2021-368714, DEF 00087). O'Connor was responsible for forwarding the crime report onto the watch commander for approval. DSUF ¶ 20; ECF No. 22-5 at 2 (Solovyev Decl. ¶ 18). Once the crime report is approved by the watch commander it is entered into Sacramento Sheriff's Department reporting system. Id. The report is then sent to Records Transcription which is then forwarded to the district attorney's office for submission. Id. Deputy Solovyev was not the watch commander responsible for approving the report, did not forward the crime report to the district attorney's office, and did not contact the district attorney's office regarding the incident between plaintiff and defendant Friedrichs. Id.

3. Analysis – No Retaliation in Violation of the First Amendment

Defendants argue that plaintiff's retaliation claim fails because "[n]o evidence exists that Deputy Solovyev contacted the Sacramento district attorney's office because Plaintiff threatened to file a civil lawsuit." ECF No. 22-1 at 26. In opposition, plaintiff argues that the district attorney referral process created liberty interests under the Fourteenth Amendment, which required due process to ensure his "state created rights were not arbitrarily abrogated." ECF No. 37 at 15; see also ECF No. 23-1 (Pl's MSJ Reply) (no response to defendants' motion for summary judgment on plaintiff's retaliation claim).

As an initial matter, plaintiff's opposition does not respond to any issue related to his retaliation claim against defendant Solovyev and fails to counter any of defendants' evidence. Plaintiff's Exhibit I merely confirms that plaintiff was arrested for an incident on or around December 6, 2021, and that the United States Probation Office of the Central District of California was investigating, but nothing else. See ECF No. 37 at 68. Also, the record is devoid of evidence supporting the first element of plaintiff's retaliation claim: an adverse action *by* defendant Soloyvev. Accordingly, the undersigned recommends granting defendants' motion on this claim.

V. Plain Language Summary of this Order for a Pro Se Litigant

The undisputed evidence, which includes video evidence and your testimony, shows that defendants Parker-Wright and Solovyev were not deliberately indifferent to your medical needs,

and defendants Parker-Wright, Friedrichs, and Solovyev did not use excessive force against you. There is no evidence that defendant Solovyev discriminated against you based on your race or ethnicity, or retaliated against you in violation of the United States Constitution. Accordingly, the magistrate judge is recommending that defendants' motion for summary judgment be granted.

CONCLUSION

IT IS HEREBY ORDERED that:

1. Defendants' motion to strike (ECF No. 41) is GRANTED in part and DENIED in part as follows: granted with respect to Exhibits J and L, and denied with respect to Exhibits F, I, K, and Q.

2. The Clerk of the Court is directed to update the docket to reflect the correct spelling for defendant Friedrichs' last name, and to randomly assign a United States District Judge to this action.

IT IS HEREBY RECOMMENDED that defendant's motion for summary judgment (ECF No. 22) be granted, and judgment entered in favor of defendants.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within twenty-one days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any response to the objections shall be served and filed within fourteen days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: September 22, 2025

ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE